

**West Virginia Parkways, Economic
Development and Tourism Authority**

**Toll System Upgrade
Request for Proposals
RFP # TE-1-10**

Exhibit B
Draft Maintenance Contract
Terms and Conditions

For

**Toll Collection Equipment
System Maintenance
Customer Account Management and
Violation Processing System**

January 2010

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1.0 General

1.1 *Governing Law:*

This contract shall be governed by the laws of the State of West Virginia, applicable provisions of the Legislative Rules of the Purchasing Division, and any unique Purchasing Rules promulgated by the Authority. The Contractor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws and regulations, Federal, State and Local Government.

1.2 *Compliance with Laws and Regulations:*

The Contractor shall be responsible for contacting the West Virginia Department of Tax and Revenue to determine any and all sales, employment, use, personal property, or any other tax responsibilities that may be incurred through any contracts, transactions, deliveries, or performance of services resulting from this RFP prior to submitting a Proposal. Any and all such taxes due are the sole responsibility of the Contractor and in no case shall the Authority accept, assume, or become otherwise entangled in any such responsibility.

The Contractor shall obtain and maintain at their own expense all necessary permits and other licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

1.3 *Subcontracts/Joint Ventures:*

The Contractor is solely responsible for all work performed under this contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The Authority will consider the Contractor to be the sole point of contact with regard to all contractual matters. The Contractor may, with the prior written consent of the Authority, enter into written subcontracts for performance of work under the resulting contracts; however, the Contractor is totally responsible for payment of all subcontractors.

1.4 *Order of Precedence:*

The RFP, RFP addenda, Contractor's technical proposal provided in response to the RFP, and Contractor's Price Proposal will be included as part of this contract by reference. This contract supersedes the RFP and any RFP addenda. The RFP and any RFP addenda supersede the Contractor's proposal in response to the RFP.

1.5 *Mandatory Requirements:*

Any specification or statement containing the word "must", "shall", or "will" is and

shall be interpreted by the parties as mandatory.

1.6 Contractor Relationship:

The relationship of the Contractor to the Authority shall be that of an independent contractor. No partnership, joint venture or similar business entity, principal-agent relationship or employer-employee relationship is contemplated nor will any such relationship be created by the parties in entering this contract. The Contractor is solely liable for the acts and omissions of its employees and agents.

Contractor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this contract. Neither the Contractor, nor any employees or contractors of the Contractor, shall be deemed to be employees of the Authority for any purposes whatsoever.

Under this contract, the Contractor shall be exclusively responsible for payment of/to employees and contractors and subcontractors for all wages and salaries, taxes (including sales tax), withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

The Contractor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Authority.

1.7 Price Quotations:

The prices quoted by the Contractor in their Price Proposal will not be subject to any increase after Notice To Proceed and will be considered firm for the life of this maintenance contract. Only price changes due to an Authority approved change order shall be allowed under the maintenance contract. No adjustments in the price of maintenance services shall be made due to changes in the Consumer Price Index (CPI) or other index

The Authority shall have the right to purchase maintenance services for any other lane(s) and/or plaza(s) provided by the Contractor. The Contractor grants the Authority the right to make such purchases at any time during the life of the maintenance contract based only on prices quoted by the Contractor in their Price Proposal. The Authority will issue a change order for each such additional purchase.

On and after the date of Project Acceptance and after the initial purchase of spare parts and equipment described in Section 9.7.2 of the RFP TE-1-10, WVPEDTA may purchase spare parts from the Contractor at the Contractor's cost (not including overhead) plus a 10% mark up. Such arrangements shall include the purchase of spare parts for regular maintenance or repairs. The Contractor shall be required to maintain adequate spare parts as required in RFP TE-1-10. Additionally, any cost incurred by the Contractor as part of the procurement of spare parts shall be covered by the 10% mark-up and the Contractor shall not include any additional costs in the rest of the maintenance pricing to cover these activities.

1.8 Indemnification:

The Contractor agrees to indemnify, defend and hold harmless the Authority, its members, officers, employees and agents, from and against any and all claims, demands, causes of action, debts and other liabilities including attorney fees and expert fees including but not limited to the following: (1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under this contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; (3) Any failure of the Contractor, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws; and (4) Contractor shall indemnify and hold harmless the Authority, its members, officers, employees and agents from and against any and all claims, demands, cause of action, debts, or other liabilities (including attorney's fees and expert fees) made against or owed by the Authority (which shall be deemed to include its officers, employees, subcontractors, consultants, agents and subcontractors) in any way relating to a claim for infringement of patents, or inducement to infringe, copyrights, trademarks, trade secrets or any other third party proprietary rights, arising as a result of the Authority's use of, or the Contractor's supplying, the New Toll Collection System, including any Equipment, Software or Services. Contractor shall defend any claim with counsel designated by the Authority against which the Contractor has no reasonable objection. Without limiting the generality of the foregoing or limiting any other remedies of WVPEDTA, if the New Toll Collection System or any item of Equipment or the Software or any portion thereof is held to constitute an infringement and its use is (or may be) enjoined, the Contractor, at its option and expense, will (i) obtain a license for the WVPEDTA to use the alleged infringing item, or (ii) modify or replace the alleged infringing portion.

Contractor shall hold harmless and defend the Authority from and against any and all claims including but not limited to the payments, withholdings, contributions, taxes, social security taxes and employer income tax returns referred to in the next preceding paragraph. Contractor shall obtain coverage for this contractual indemnity in the insurance policy provided for in Section 1.11 of this Contract.

The Contractor shall inform the Authority if any subcontractor, consultant, agent or supplier providing goods or services to the Authority is or shall become a party to any litigation involving patent or copyright impingement, trademark violation, antitrust or other trade regulation or proprietary rights claim or is or shall become subject to any injunction which may prohibit it from providing Equipment, Software or Services hereunder. The Authority may reject any such subcontractor, consultant, agent or supplier, if in the Authority's judgment use thereof would delay the implementation of the system or be unlawful.

The Authority shall give the Contractor notice, with reasonable promptness, of any Claim received by it for which indemnification is sought hereunder, and the Contractor shall assume, as aforesaid, the primary defense thereof, including appeals. The Authority shall, upon the Contractor's request and at the Contractor's expense, furnish information and assistance available to it and provide reasonable cooperation as requested to facilitate the defense and/or settlement of any such Claim. Notwithstanding the foregoing, the Authority may elect, at its own expense, to defend or participate in the defense of any Claim in which it is a named defendant, provided that if Contractor has not abandoned or otherwise abrogated the defense of any such claim and the Authority settles such Claim without the Contractor's prior written consent, the Contractor shall have no obligation to indemnify and hold harmless the Authority against any cost, loss or expense of any kind or nature arising out of such Claim.

The indemnification shall not extend to any alleged infringement or violation to the extent that it: (i) shall result from the Authority's use of the upgraded toll system or any component thereof other than as provided in this Contract, or (ii) relates to use of Equipment or Software in combination with other equipment or software, furnished either by the Authority or by others, which combination is not consistent with the Contract, if such claim would have been avoided but for such combined use.

1.9 *Record Retention (Access & Confidentiality):*

Contractor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Contractor. The Contractor shall maintain such records for a minimum of five (5) years and make available all records to Authority personnel at Contractor's location during normal business hours upon written request by Authority within ten (10) days after receipt of the request.

Contractor shall have access to private and confidential data maintained by the Authority to the extent required for Contractor to carry out the duties and responsibilities defined in this contract. Contractor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the Authority against any and all claims brought by any party attributed to actions of breach of confidentiality by the Contractor, subcontractors or individuals permitted access by Contractor.

1.10 Contract Bond:

No additional Contract Bond is required for this maintenance contract.

1.11 Insurance Requirements:

The selected Contractor shall at its own expense procure, maintain over the life of the contracts, and provide evidence that all of the following insurance policies are in force prior to execution of the contracts. Said policies shall be countersigned by an Agent licensed by the State of West Virginia and incorporate the printed name, street address, zip code and West Virginia license number of said Agent. Said policies shall provide for at least 30 days notice prior to cancellation and said notice shall be made directly to the Authority.

These policies shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under any other provision of the contracts or otherwise in law.

Commercial general liability (CGL) coverage with limits not less than:

General Aggregate	\$2,000,000
Products Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$ 50,000
Medical Expense Limit	\$ 5,000

The CGL shall be written on ISO occurrence form CG 00 01, or equivalent, and shall cover liability arising from premises-operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage whenever work involving these exposures is undertaken. The CGL policy shall include endorsements that amend the aggregate

limits of insurance to be applicable to each implementation project separately.

Employer's Liability Insurance including coverage to protect the Contractor for claims brought under Section 23-4-2 of West Virginia Code. The limits of this insurance shall not be less than:

Each accident	\$2,000,000
Each disease	\$2,000,000
Each disease employee	\$1,000,000

As part of the requirement of this section, Contractor shall provide the Exhibits 5.2 and 5.2.

1.12 Force Majeure:

The Authority (subject to the provisions of Section 4.3 hereof) and the Contractor may be excused from performance hereunder if such non-performance results from acts of God, war, riots, acts of governmental authorities, or any other cause that could not have been reasonably anticipated and which could not be overcome by the exercise of due diligence or planning by the non-performing party. In the event of the occurrence of a Force Majeure event, the party unable to perform shall promptly notify the other party. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend or delay performance only for such period of time as is necessary as a result of the Force Majeure event. In such event, the time for the performance of the obligations under this Agreement will be extended for a period commensurate with the delay but the Contractor will receive no additional compensation.

Contractor agrees to take all reasonable and appropriate actions to mitigate the impact of damages and delays in all circumstances, including but not limited to, such actions of Contractor, re-sequencing, reallocating or redeploying resources.

1.13 System Maintenance:

Contractor will provide maintenance for the System hardware and software in accordance with the terms and conditions of this Agreement and the applicable provisions of the RFP.

Designing, furnishing, constructing, installing, testing and integrating an upgraded Toll System for the West Virginia Turnpike.

The Toll System shall be for operation by the Authority or its designee, and shall properly collect and report tolls electronically from vehicles moving through including stop-and-go traffic and shall properly identify and process toll violations as more fully described in the Technical Requirements of the RFP.

Maintenance of the Toll System, including optional equipment, for a period of one (1) year, with nine (9) additional one (1) year options, as more fully described in the RFP Technical Requirements and the RFP Price Proposal Instructions is part of the work required to be performed by Contractor.

Maintenance of all Existing Toll Collection lane hardware which is part of the toll system upgrade for a period of one (1) year with nine (9) additional (1) year options, as more fully described in the RFP Technical Requirements and RFP Price Proposal Instructions.

A proposal may be included by Contractor for maintenance of the Existing Toll Collection System software, software enhancements to the Existing Toll Collection System software, and system hardware through the use of a pre-determined amount (PDA) through a subcontract with TransCore, LLC, the Existing Toll Collection System provider and maintainer, for a period of one (1) year, with up to nine (9) additional one (1) year options, as more fully described in the RFP.

The Work also includes provision of a violations processing center (VPC) and a customer service center.

1.14 Maintenance for In-Lane and Host System

1.14.1 General Obligations:

Contractor shall assume responsibility for all maintenance of the Project, as described in Exhibit F, Scope of Work, as the system is Accepted or Provisionally Accepted as further described in the RFP.

1.14.2 Maintenance Policy:

All policy decisions regarding the Project shall rest with the Authority.

1.14.3 Ownership of Project Equipment and Supplies:

The Authority shall own all materials and equipment, including computer hardware and software, and supplies purchased under this Agreement for the Authority and still useful in the operation of the Project when Project Completion is attained. Title to all hardware, software, and supplies purchased for the Authority under this Agreement and still useful in the operation of the Project shall pass to the Authority as directed by the Authority at Project Completion. Contractor agrees to execute any and all papers necessary to perfect ownership of hardware and supplies.

1.14.4 Maintenance Requirements:

Contractor shall perform all periodic and routine system maintenance, functions necessary so that all facilities and equipment comprising the System meet the functional requirements and performance standards set out in Exhibit F, Scope of

Work in the RFP. Performance achievements relative to the performance standards will be measured as described in Exhibit F, Scope of Work.

1.14.5 Prohibition Against Tampering:

Contractor is prohibited from employing any electronic or other means of altering the performance data measurement for the Work. Tampering with, falsely reporting or artificially enhancing performance data is a material breach of this Agreement, subjecting the Contractor to termination for cause pursuant to the applicable section (s) of this Agreement, in addition to any other remedies available by law.

2.0 Representations, Certifications, & Warranties

2.1 *Contractor Registration:*

The Contractor represents and warrants that it has completed, paid for, and filed a **Contractor Registration and Disclosure Statement** (Form WV-1) to the satisfaction of the West Virginia Purchasing Division prior to the execution of this contract.

2.2 *Purchasing Affidavit:*

The Contractor represents and warrants that it has, in accordance with West Virginia Code §5A-3-10a, submitted a signed affidavit regarding any debt owed to the State.

2.3 *Conflict of Interest:*

The Contractor represents and warrants that it, its officers or members or employees at present have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Contractor further covenants that in the performance of the Contract, the Contractor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Authority.

2.4 *Prohibition Against Gratuities:*

The Contractor represents and warrants that it has not employed any company or person other than a bona fide employee working solely for the Contractor or a company regularly employed as its marketing agent to solicit or secure this contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of this contract.

For breach or violation of this warranty, the Authority shall have the right to annul the RFP award and this contract without liability at its discretion and pursue any other remedies available under this contract or by law.

2.5 *Certifications Related to Lobbying:*

Contractor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit a disclosure form to report the lobbying.

Contractor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers, including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly.

2.6 Disputes:

Any controversy, claim or dispute arising out of, or related to this Agreement or any breach thereof may be settled amicably by the parties through a mediation process in accordance with the applicable mediation guidelines prevailing in West Virginia. If the mediation process does not result in an acceptable settlement of the controversy, claim or dispute, then the matter may be resolved in a court of competent jurisdiction in the State of West Virginia.

2.7 Ownership:

2.7.1 Title:

Except for contingent title rejection, title to the hardware components provided pursuant to this Agreement shall pass to the Authority upon receipt of payment associated with such hardware from the Authority and installation at the respective Authority work site. The Contractor represents and warrants that it will have absolute and good title to the hardware components, free and clear of all liens, encumbrances or any claims of any kind whatsoever at the date of the transfer of title and it will transfer same to the Authority.

Notwithstanding the fact that the Authority may have been deemed to have accepted title in accordance with the previous Section, title acceptance is contingent upon full system acceptance by the Authority, accordingly, in the event the system is not fully accepted by the Authority as contemplated by this agreement, it shall have the right, at its election, to reject title to any or all components comprising all or any part of the system.

2.7.2 Software Ownership/Proprietary Information:

(a) All software and associated software manuals and documentation shall be supplied to the Authority pursuant to the provisions of the Contractor's standard Software License Agreement, which forms a part of this contract and is attached within the Implementation Contract as Section 6.0. This License Agreement entitles the Authority to a perpetual, royalty fee, non-exclusive license to use the software and associated manuals and documentation supplied by Contractor with the equipment furnished hereunder.

(b) Ownership of all data, materials, drawings, manuals, training materials and documentation originated and prepared for the Authority pursuant to the RFP and all updates thereto shall belong exclusively to the Authority and be subject to public inspection in accordance with the West Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Proposer may not be subject to public disclosure under the West Virginia Freedom of Information Act; however the Proposer may be requested to invoke these protections pursuant to Section 4(1), Article 1, Chapter 29B of the West Virginia Code, in writing, by indentifying in writing such trade secrets or proprietary information either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures or paragraphs that constitute trade secret or proprietary information. The classification of any entire bid document, line item prices or prices as proprietary or trade secrets is not acceptable and may result in rejection and return of the proposal.

2.8.1 Non-Waiver of Rights:

Failure on the part of the Authority to strictly enforce any of the terms or conditions of this Agreement to be performed by the other party, or to exercise any rights or remedies, shall not be construed as a waiver of either party's rights to assert any of the same, or to rely on any such terms or conditions at any time thereafter.

2.8.2 Assignment:

This Agreement, any duties hereunder, or interest herein may not be assigned or delegated by either party without express written consent of the other party which will not be unreasonably withheld. Any attempt by the either to assign any of the rights, duties or obligations of this Agreement without such consent shall be null and void. Notwithstanding the above, the Authority has the right to assign to a successor agency which would have the same obligation as the current Authority. Successors and assigns of Authority must be a governmental agency, bureau, commission, or similar governmental entities, otherwise prior written consent is required.

2.9 Governing Law:

This Agreement shall be governed by and construed under the laws of the State of West Virginia. It is agreed that in absence of any provision relating to the sale of goods, the West Virginia Uniform Commercial Code shall govern the rights, duties and remedies of the parties.

2.9.1 Severability:

If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall be deemed unaffected thereby.

2.9.2 Notices:

Any notice or communication to the Contractor shall be deemed served if it is delivered, in writing, personally or by registered or certified mail to:

3.0 Contract Term, Changes, and Termination

3.1 *Term of Contract:*

This contract shall be executed concurrent with the Implementation Contract and shall be effective from Project Acceptance until June _____, 2019.

3.2 *Contract Renewal:*

The Contractor shall grant the Authority the irrevocable right to renew this contract for an additional ten (10) years. The annual price of maintenance under this renewal shall only incorporate the price contained in the Contractor's Price Proposal and any changes in the Consumer Price Index (CPI) which occurred since Project Acceptance.

3.3 *Changes:*

Any final and unappealable change in Federal or State law, or court decisions which constitute binding precedent in West Virginia, and which significantly alter the Contractor's required activities or any change in the availability of funds, shall warrant good faith renegotiation of the compensation paid by or due to the Contractor from the Authority and of such other provisions of the contract that are affected.

If any other changes to this contract become necessary, a formal contract change order will be negotiated by the Authority and the Contractor in each case, to address any changes to the terms and conditions, including the costs of work included under this contract. An approved contract change order must be in writing with proper date and executed by a duly authorized representative of the Authority and placed in the U.S Mail postage prepaid or delivered by other appropriate means to the Contractor prior to the effective date of the contract amendment contemplated by the change order. An approved contract change order is required whenever the change affects: (a) the payment provision; (b) the scope of the work; (c) date of completion of the Work or any portion thereof; (d) a change in the date for any deliverables; or a like provision. Such changes may be necessitated by new and amended Federal and State regulations and requirements.

As soon as possible after receipt of a written change request from the Authority, but in no event more than thirty (30) days thereafter, the Contractor shall determine if there is an impact on price with the change requested and provide the Authority a written statement identifying any price, schedule and/or performance impacts on the contract or to state that there is no impact. In the event that price will be impacted by the change, the Contractor shall provide a description of the price increase or

decrease involved in implementing the requested change.

No change shall be implemented by the contractor until such time as the contractor receives an approved written change order from the authority.

3.4 Termination of Agreement:

3.4.1 Termination of Causes Beyond Control of Contractor:

The performance of Work under this Maintenance Agreement may be terminated by the Authority, in its sole discretion, upon application by the Contractor for unforeseen causes beyond the control and without fault or negligence of the Contractor, including any Force Majeure event as defined in this Agreement, if such causes irrecoverably disrupt or render impossible the Contractor's performance hereunder. Upon termination pursuant to this section, Contractor shall submit a claim in accordance with the claims provisions of this Agreement, shall be reimbursed for all non-recoverable costs incurred for equipment, materials, software, supplies and services provided, supplied or produced for the benefit of the Project prior to the date of such termination, and all non-recoverable costs incurred for services and commercially reasonable quantities of products and materials received or ordered (if such orders cannot be canceled), not to exceed the Maximum Amount payable under the Agreement for such equipment, materials, products, software, supplies and/or services, if applicable. Such products and materials upon payment become the property of the Authority whether such acceptance occurs before or after such termination.

3.4.2 The Authority's Right of Termination:

The Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor, or upon thirty (30) calendar days' written Notice to the Contractor if terminated for the convenience of the Authority as set forth in the Section 3.4.1 above.

Contractor shall notify Subcontractors and service or supply vendors providing Work under this Agreement of any early termination date of this Agreement. Failure to notify Subcontractors and service or supply vendors shall result in the Contractor being liable for the termination costs and all additional costs incurred by a Subcontractor and service or supply vendor after the Notice date for Work performed under this Agreement, except those specifically agreed to by the Authority in the termination Notice to the Contractor.

3.4.3 Termination for Cause:

The Authority may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Contractor materially fail to

perform the requirements of this Agreement at the time and in the manner herein provided (Contractor “event of default”). In the event the Authority determines sufficient cause exists, it will send a Notice to cure to the Notice address set forth in this Agreement for Contractor. If Contractor fails to satisfactorily cure the problem (s) within ten (10) days of receiving written Notice from the Authority specifying the nature of the cause an event of default shall be deemed to have occurred and the Authority may immediately cancel and/or terminate this Agreement and every right of the Contractor and any person claiming any right by or through the Contractor under this Agreement.

Events of material breach shall include, but not be limited to, failure to adhere to the required maintenance schedule or response schedule, failure to maintain required insurance; bankruptcy; failure to pay any Subcontractor or other company or person retained by Contractor in connection with this Agreement; Contractor refuses or negligently fails, except in cases for which extension of time is provided by the Authority, to supply sufficient properly skilled staff or proper materials to perform as required by this Agreement; or Contractor negligently or intentionally disregards or otherwise violates laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; defective or unsatisfactory performance, or any other breach of any of the Contractor’s obligations under the Contract Documents.

In the event of such termination, the Authority may proceed with the Work in any manner deemed proper by it. All actual and reasonable costs to the Authority in the event of termination for cause (“termination costs”) together with any other applicable deductions shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor, subject to any retainage, within ninety (90) days after such termination costs have been ascertained by the Authority and Disentanglement (as defined below) has been completed. Termination costs include, but are not limited to the cost of soliciting a new contractor and any increase in the fees that must be paid to the new contractor.

3.4.4 Disentanglement:

Contractor acknowledges that the Work provided under the terms of this Agreement is vital to the Authority and must be continued without interruption. Upon any termination of this Agreement or upon the conclusion of the term of the Agreement, a successor may be responsible for providing this Work. The Contractor agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

A. General Obligations

Upon termination of the Agreement, whether for cause or convenience, or upon conclusion of the term of the Agreement, Contractor shall accomplish a complete transition of the Work being terminated from Contractor and any Subcontractor to the Authority or

to any replacement provider designated by the Authority, without any interruption of or adverse impact on the Work or any other Work provided by third parties (the "Disentanglement"). Contractor shall cooperate with the Authority and any new service provider and otherwise promptly take all steps required to assist the Authority in effecting a complete Disentanglement. Contractor shall provide all information regarding the Maintenance Work or as otherwise needed for Disentanglement, including data conversion, files, interface specifications, know-how transfer, training as the Authority may direct, including completion or partial completion of specific maintenance items or requirements, documentation of Work in process, and other measures to assure an orderly transition to the Authority or the Authority's designee. All services related to Disentanglement prior to termination shall be deemed a part of the base Work and shall be performed by Contractor at no additional cost to the Authority. Contractor's obligation to provide the services shall not cease until Disentanglement is satisfactory to the Authority including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this section have been completed.

B. Disentanglement Process

This Disentanglement process shall begin on any of the following dates: (i) the date the Authority Notifies Contractor that the Agreement shall be terminated for convenience; (ii) the date designated by the Authority not earlier than sixty (60) days prior to the end of any initial or extended term that the Authority elected to extend pursuant to the Agreement; or (iii) the date any Termination Notice is delivered, if the Authority elects to terminate any or all the Work pursuant to this Agreement. Subject to Exhibit F, Scope of Work, Contractor's obligation to perform Work, and the Authority's obligation to pay for Work, shall expire upon termination except that Contractor shall remain obligated to provide Disentanglement services at the Authority's request for up to twelve (12) months after any such termination date, and the Authority shall pay for those services at the rates set forth in the Agreement. Contractor and the Authority shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations under this Agreement and provide all services necessary for Disentanglement which shall not be lessened in any respect. Contractor shall develop with the successor contractor or the Authority's staff, a Contract Transition Plan describing the nature and extent of transition service required. The Contract Transition Plan and dates for transferring responsibilities for Work shall be submitted within thirty (30) days of such Notice. Upon completion of the Authority's review, both parties will meet and

resolve any additional requirements/differences. Contractor shall be required to perform its Disentanglement obligations on an expedited basis, as determined by the Authority, if the Authority terminates this Agreement for cause.

C. Specific Obligations

The Disentanglement shall include the performance of the following specific obligations:

1. Full Cooperation and Information

Upon Disentanglement, the parties shall cooperate fully with one another to facilitate a smooth transition of the Work being terminated from Contractor to the Authority or the Authority's designated replacement maintenance provider. Such cooperation shall include the provision (both before and after the cessation of Contractor's providing all or any part of the Work under this Agreement) by Contractor to the Authority of full, complete, detailed and sufficient information (including all information then being utilized by Contractor) to enable the Authority personnel (or that of a third party) to fully assume and continue without interruption the provision of the Work.

2. No Interruption or Adverse Impact

Contractor shall cooperate with the Authority and all of the Authority's other service providers as necessary to ensure a smooth transition at the time of the Disentanglement, with no interruption of Work, no adverse impact on the provision of Work or the Authority's activities, no interruption of any Work by third parties, and no adverse impact on the provision of services provided by third parties.

3. Third Party Authorizations

Without limiting the obligations of Contractor pursuant to any other clause herein, Contractor shall, subject to the terms of any third-party contracts, procure at no charge to the Authority any third-party authorizations necessary to grant the Authority the use and benefit of any third-party contracts between Contractor and third-party contractors used to provide Work, pending their assignment to the Authority.

4. Transfer of Assets

Contractor shall convey to the Authority all the Authority assets need for system maintenance in Contractor's possession. If applicable, at the election of the Authority, Contractor shall convey to the Authority from among those assets then held by the Contractor for the provision of Work to the Authority such assets as the Authority may select, at a price consisting of the net book value. Contractor shall promptly remove from the Authority premises any Contractor asset that the Authority, or its designee, chooses not to purchase.

5. Transfer of Leases, Licenses and Contracts

Contractor, at its expense, shall convey or assign to the Authority or its designee such leases, licenses and other contracts used by Contractor, the Authority, or any other person in connection with the Work, as the Authority may select. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall indemnify, defend and hold harmless the Authority for any losses or liability resulting from any claim that Contractor did not perform any such obligations.

6. Delivery of Documentation

Contractor shall deliver to the Authority or its designee, at the Authority's request, all documentation and data related to the Authority, including the Authority's data, held by Contractor, and upon Approval by the Authority, Contractor shall destroy all copies thereof not turned over to the Authority, all at no charge to the Authority. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding the Authority data, for archival purposes or warranty support.

4.0 Payment

4.1 *Invoices & Retainage:*

The Contractor shall only submit invoices after the delivery by the Contractor and approval by the Authority of specific goods and services. The specific goods and services and the associated payment amounts are detailed in Exhibit D: Payment Schedule as provided in the RFP.

The Contractor shall submit such invoices, in arrears, to the Authority at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contracts resulting from this procurement.

Contractor invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

Invoices under this maintenance contract are not subject to retainage.

4.2 *Liquidated Damages:*

4.2.1

The Contractor agrees that liquidated damages shall be imposed by this contract. The terms below shall in no way be considered exclusive and shall not limit the Authority or Authority's right to pursue any other additional remedy which the Authority may be entitled to pursue.

4.2.2 *Liquidated Damages During the Term of Maintenance Contract*

The Maintenance services to be performed are set forth in Exhibit F, Scope of Work, Section 2.7, 2.16.5 and 9-9.16, Technical Requirements, Section Maintenance Service. Contractor must meet these requirements. In addition to the Authority's other rights and remedies, it may assess liquidated damages for failure to perform these maintenance services, including but not limited to, system performance, availability and mean time between failures, as further described in Exhibit F, Scope of Work Sections 2.16.5, 2.7 and 9-9.16.

4.2.3

The Contractor shall be required to meet performance requirements that are detailed in Section 2.7 and 9 of the Scope of Work. In addition, to the Authority's other rights and remedies, it may assess liquidated damages for failure to meet these performance requirements.

4.2.4

In addition to the Authority's other rights and remedies, the Contractor shall also be responsible for damages associated with the loss of data/and or revenue for failure of the System to properly operate. For every day in which the System fails to operate and revenue and/or data is lost, an amount equal to one thirtieth (1/30) of the combined monthly maintenance fee and all lost revenue associated with the failure shall be assessed as liquidated damages against the Contractor. Revenue lost will be determined by the Authority, using data for comparable time periods where such loss cannot otherwise be directly determined.

4.2.5

The Authority's right to receive liquidated damages shall be in addition to all other rights and remedies available to the Authority under the Contract Documents, at law or in equity. Nothing contained in this Liquidated Damages section shall be construed as limiting the rights of the Authority to additionally recover from the Contractor any or all payment which become due to the Authority for reasons other than untimely performance, such as improper performance, failure to perform or breach of contract in any other respect, including but not limited to defective workmanship, equipment or materials.

Additional liquidated damages shall be paid by the Contractor to the Authority after Project Acceptance as specified in Exhibit F: Scope of Work and Technical Requirements Section 9.16 provided in the RFP. The total amount of such liquidated damages shall not exceed the total value of the maintenance contract.

4.3 *Third Party Certification:*

PCI Compliance: As a condition of System Acceptance the Contractor shall provide certification by an independent third party authorized to provide PCI compliance certification that the WVCSC and WVVPC is PCI compliant. Further, this PCI compliance shall be re-certified on an annual basis on or about the anniversary date of the initial certification for the duration of the Maintenance period.

5.0 ATTACHMENTS

5.1 FORM OF INSURANCE COVERAGE CERTIFICATES

(WV Legal to provide copy)

5.2 FORM OF INSURANCE CARRIER CERTIFICATION LETTER

(WV Legal to provide copy)

5.3 PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT (AFFIRMATION FORM?)

(WV Legal to provide copy)

5.4 FORM OF SMALL BUSINESS COMMITMENT LETTERS

(WV Legal to provide copy)